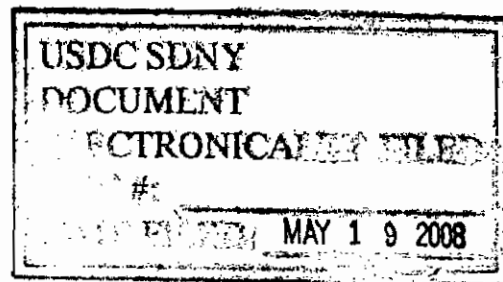


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
CAPPONI, et al.,

Plaintiffs,

-v-

No.08 Civ.4449 (LTS)(DFE)

MURPHY, et al.,

Defendants.  
-----X

**ORDER**

WHEREAS, this action was commenced by the filing of a Complaint on May 13, 2008; and

WHEREAS, the Court has reviewed the Complaint to ascertain the basis for assertion of subject matter jurisdiction in this court; and

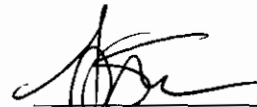
WHEREAS, the Complaint asserts that the Court has jurisdiction based on diversity of citizenship (28 U.S.C. § 1332), but where one party is a limited partnership (LP) or a limited liability company (LLC), the LP's and LLC's citizenship is the same as that of each member, Handelsman v. Bedford Village Associates, Ltd., 213 F.3d 48, 52 (2d Cir. 2000); Strother v. Harte, 171 F. Supp. 2d 203, 205 (S.D.N.Y. 2001) and the Complaint fails to allege the citizenship of each partner in the plaintiff limited partnership as well as that of each member of the plaintiff limited liability company; and

WHEREAS, diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) requires a demonstration that the action is between citizens of different states and, with respect to the individuals named, the Complaint fails to allege their citizenship; and

WHEREAS, "subject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power," E.R. Squibb & Sons v. Accident & Cas. Ins. Co., 160 F.3d 925, 929 (2d Cir. 1998) (citation omitted), and Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action;" it is hereby

ORDERED, that plaintiff shall, no later than **May 28, 2008**, file and serve a Supplement to the Complaint containing allegations sufficient to demonstrate a basis for subject matter jurisdiction in this Court or otherwise show cause in writing as to why this case should not be dismissed for lack of subject matter jurisdiction.

Dated: New York, New York  
May 19, 2008



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LAURA TAYLOR SWAIN  
United States District Judge